

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
and)	
)	
PEOPLE OF THE STATE OF ILLINOIS,)	
<u>ex rel.</u> JAMES E. RYAN, Attorney)	
General of the State of Illinois,)	
)	
Plaintiff-Intervenor)	
)	
-v-)	No. 99-87-GPM
)	
CLARK REFINING AND MARKETING, INC.)	
)	
Defendant.)	
)	

CONSENT DECREE

WHEREAS, Plaintiff the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), filed a Complaint in this Court against Clark Refining and Marketing, Inc., now known as The Premcor Refining Group Inc. (hereafter "Defendant" or "Premcor"), seeking injunctive relief and civil penalties for alleged violations of the Clean Air Act, 42 U.S.C. §§ 7401 et seq. and the federally enforceable Illinois State Implementation Plan ("SIP") at

Defendant's petroleum refinery in Hartford, Illinois (the "Hartford Refinery");

WHEREAS, Plaintiff, People of the State of Illinois, ex rel. James E. Ryan, Attorney General of the State of Illinois ("State"), filed a Complaint in Intervention in this matter alleging violations of the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq., at Defendant's Hartford Refinery;

WHEREAS, the United States' and State's Complaints allege violations, at the fluid catalytic cracking unit ("FCCU") at Defendant's Hartford Refinery, of the Prevention of Significant Deterioration ("PSD") requirements at Part C of the Clean Air Act, 42 U.S.C. §§ 7470-7492, and their implementing regulations at 40 C.F.R. § 52.21, which are incorporated by reference in the Illinois SIP. The Complaints also allege exceedances of certain SIP-based emission limits at the FCCU and include one count of operating the unit without a permit;

WHEREAS, the Parties agree that the installation of equipment and implementation of environmental controls pursuant to this Consent Decree will achieve significant reductions in the emission of regulated pollutants from the Defendant's facility;

WHEREAS, the Parties recognize and the Court, by approving and entering this Consent Decree, finds that the Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation among the Parties concerning the matters addressed herein, and that this Consent Decree is fair, reasonable, and in the public interest;

WHEREAS, the Parties, without any admission of liability by the Defendant, consent to entry of the following Consent Decree resolving the United States' and State of Illinois' claims;

NOW, THEREFORE, without adjudication of any issues of fact or law, upon the consent and agreement of the Parties, it is hereby ADJUDGED, ORDERED AND DECREED AS FOLLOWS:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter and the Parties to this action pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and 28 U.S.C. §§ 1331, 1345, and 1355. This Court also has personal jurisdiction over the Defendant. The Complaints filed by the United States and the State of Illinois state claims upon which relief can be granted.

2. Venue properly lies in this District because it is a judicial district in which Defendant does business, where Defendant's Hartford Refinery is located, and where the alleged violations occurred.

3. Defendant agrees to be bound by this Consent Decree and not to contest its validity in this or any subsequent proceeding to implement or enforce its terms.

II. APPLICABILITY

4. This Consent Decree shall apply to and be binding upon the United States and the State and upon the Defendant and Defendant's agents, officers, directors, employees, successors and assigns. Defendant shall be responsible for the acts of its agents, officers, directors, employees, successors, assigns and its contractors and consultants who cause Defendant to violate the terms of this Consent Decree.

5. No change in ownership, corporate status or operator of the Hartford Refinery shall in any way alter the responsibilities of Defendant under this Consent Decree. In the event of any conveyance of title, easement or other interest in the facility, Defendant shall continue to be bound by and remain liable for performance of all obligations under the Decree. In appropriate circumstances, however, the Defendant and a contemplated future owner or operator of the facility may

jointly request, and the United States and the State, in their discretion, may consider modification of this Decree to obligate the proposed purchaser or operator to carry out future requirements of the Decree in place of or in addition to the Defendant.

6. In the event that Defendant proposes to sell or transfer any real property or operations subject to this Consent Decree, Defendant shall notify U.S. EPA and Illinois EPA 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility. Defendant shall make the prospective purchaser or successor's compliance with this Consent Decree a condition of any such sale or transfer and shall provide a copy of this Decree to any such successor in interest. This provision does not relieve Defendant from compliance with any State regulatory requirement regarding notice and transfer of applicable facility permits.

7. Defendant shall notify each prime contractor to be retained to perform work required in this Consent Decree of each of the requirements of the Decree relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Decree to each contractor already retained no later than 30 days after the date of lodging of this Decree. In addition, the Defendant shall

provide copies of all schedules for implementation of the provisions of this Consent Decree to the prime vendor(s) supplying the control technology systems and other equipment required by the Decree.

8. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, successors, assigns, consultants, contractors or vendors to take actions necessary to comply with the provisions hereof.

III. STATEMENT OF FACTS

9. Defendant is a corporation organized under the laws of the State of Delaware and is qualified to do business in the State of Illinois.

10. At all times relevant to this action, Defendant has owned and operated a petroleum refinery in Hartford, Madison County, Illinois, at which it converts crude oil into gasoline and other petroleum distillates. In one of these processes, Defendant employs a unit referred to as a fluid catalytic cracking unit. Operation of the FCCU at Defendant's Hartford Refinery results in emissions of certain criteria pollutants under the Clean Air Act, including particulate matter ("PM"), sulfur dioxide ("SO₂") and nitrogen oxides ("NO_x").

11. On April 19, 1994, Defendant applied to Illinois EPA for a construction permit to replace the internal cyclones in the catalyst regenerator of its FCCU. On July 8, 1994, Illinois EPA issued the requested construction permit.

12. On September 9, 1994, Defendant halted operation of the FCCU to perform certain work, including replacement of the internal regenerator cyclones. On October 13, 1994, Defendant completed the work and resumed operation of the FCCU.

13. During this fall 1994 period and earlier in 1993 and 1994, Defendant installed and/or worked on a number of related components of the FCCU, including installation of an auxiliary blower and changes to the wet gas compressor. Defendant did not request nor obtain construction permits from Illinois EPA authorizing these modifications. Defendant disputes that such permits were required.

14. Defendant did not apply for and obtain Prevention of Significant Deterioration ("PSD") permits for the foregoing modifications, nor did it install the best available control technology ("BACT") to control emissions of regulated pollutants from the modified source(s). Defendant disputes that PSD permits or BACT were required.

IV. DEFINITIONS

15. The terms used in this Consent Decree that are defined in the Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Illinois Environmental Protection Act, 415 Illinois Compiled Statutes ("ILCS") 5/1 et seq., have the meanings contained therein. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

(a) "Consent Decree" shall mean this Consent Decree, including all modifications to the Decree that are made pursuant to its terms;

(b) "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

(c) "Defendant" shall mean The Premcor Refining Group Inc., formerly known as Clark Refining and Marketing, Inc.;

(d) "Hartford Refinery" shall mean Defendant's petroleum refinery and all associated processing, transfer and storage operations and equipment located in the City of Hartford, County of Madison, State of Illinois;

(e) "Illinois EPA" shall mean the State of Illinois Environmental Protection Agency and any successor departments or agencies of the State of Illinois;

(f) "Interest" shall mean interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. Such interest shall be compounded annually on October 1st of each year;

(g) "Notify" and "submit" and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, deposit in the United States mail, or dispatch by express courier not later than the day that such transmission or communication is required by this Consent Decree. Should such day be a Saturday, Sunday or a federal holiday, the delivery, deposit, or dispatch shall be due on the next working day;

(h) "Parties" shall mean the United States, the State of Illinois, and The Premcor Refining Group Inc., formerly known as Clark Refining and Marketing, Inc.;

(j) The "State Act" means the Illinois Environmental Protection Act, 415 Illinois Compiled Statutes 5/1 et seq.

V. INJUNCTIVE RELIEF

16. By no later than 30 days after entry of this Consent Decree, Premcor shall submit a complete application for a construction permit to Illinois EPA covering all

modifications to emission sources and air pollution control equipment at the FCCU at the Hartford Refinery made since July 1, 1993 for which a construction permit was required but was not applied for or obtained previously. The application shall include as-built plans for each such modification. Premcor shall diligently pursue issuance of the construction permit, and Illinois EPA shall diligently process the permit application.

17. By no later than 30 days after entry of this Consent Decree, Premcor shall submit a complete application for a PSD permit to Illinois EPA covering all major modifications at the FCCU and related systems or components at the Hartford Refinery since July 1, 1993. At a minimum, the permit application shall include installation of the new internal cyclones, modifications to the wet gas compressor and installation of the auxiliary blower at the FCCU. The permit application shall also include an evaluation of best available control technology for each emission source modified. Premcor shall diligently pursue issuance of the PSD permit, and Illinois EPA shall diligently process the permit application.

18. No later than the end of the next scheduled turnaround of the FCCU at the Hartford Refinery or July 1, 2003, whichever date is sooner, Premcor shall install and begin startup operation of a wet gas scrubber ("WGS") at its FCCU.

Premcor shall design the WGS to achieve an SO₂ emission concentration of 25 parts per million ("ppmvd")(at 0% oxygen) and a PM emission rate of 1 lb. per 1000 lb. of coke burnoff or lower.

19. By no later than one hundred and eighty (180) days after startup of the WGS and at all times thereafter, Premcor shall demonstrate compliance with the following limits: 25 ppmvd SO₂ (at 0% oxygen) on a 365 day rolling average of daily SO₂ concentrations, 50 ppmvd SO₂ limit on a seven day rolling average, and one lb./1000 lb. coke burn PM. The 50 ppmvd SO₂ and 1 lb/1000 lb coke burn PM limits will demonstrate compliance as required in NSPS Subpart J (40 C.F.R. Part 60, Subpart J). Defendant shall monitor emissions of SO₂ and demonstrate compliance at the FCCU through operation of a continuous emission monitor ("CEM") in accordance with 40 C.F.R. § 60.105, and shall report all exceedances of the foregoing emission limits in the reports required pursuant to paragraph 33(c) of this Decree. This CEM shall be calibrated, maintained and operated in accordance with the applicable requirements at 40 C.F.R. §§ 60.11 and 60.13.

20. No later than six months prior to its scheduled installation, Premcor shall submit process design specifications for the wet gas scrubber to U.S. EPA and IEPA. Premcor, U.S. EPA and the State agree to consult on development of the process

design specifications. Within 45 days of receipt of the proposed specifications, U.S. EPA may provide comments on the proposed specifications. Within 45 days of receipt of EPA's comments, Premcor shall address EPA's comments, and shall then submit the design to EPA for final approval. Upon receipt of final approval, Premcor shall implement the design. Premcor thereafter shall notify EPA of any substantial changes to the design that may affect performance of the WGS.

21. Premcor shall comply with all applicable permitting requirements for the wet gas scrubber, including, without limitation, submission of a complete application for a construction permit to Illinois EPA for its construction which reflects compliance with all applicable emission limits in this Consent Decree and, as appropriate, a complete application for an operating permit for the WGS. Premcor shall diligently pursue issuance of all required permits, and Illinois EPA shall diligently process the permit applications.

22. If at any time while this Consent Decree is in effect Defendant shuts down the FCCU and surrenders the applicable State operating permit, it shall be relieved of any further obligations with respect to installation and operation of a wet gas scrubber imposed pursuant to paragraphs 18-21 of this Decree.

It is understood and agreed, however, that while this Decree is in effect any application for a new operating permit shall include the requirement to operate the unit in accordance with the remaining terms and conditions in paragraphs 18-21. Clark shall not recommence operation of the FCCU except in compliance with those terms and conditions.

23. Defendant may not use any credits resulting from the emissions reductions required in this or other Sections of this Decree in any emissions banking, trading or netting program for PSD, major non-attainment New Source Review ("NSR") or minor NSR, or in any comparable State or local regulatory program.

24. This Consent Decree is not and shall not be construed to be a permit issued pursuant to any federal or State statute or regulation, nor does compliance with its terms guarantee compliance with any applicable law or regulation other than those specifically addressed herein. Nothing in this Consent Decree shall be construed to be a ruling on or a determination of any issue related to any federal, State or local permit.

VI. ENVIRONMENTAL ENHANCEMENTS/POLLUTION REDUCTION MEASURES

A. NOx Emissions Reductions -- Heaters and Boilers

25. In an effort to reduce NOx emissions to the maximum feasible extent, Premcor shall undertake the program described in this subsection VI. A., which will result in

installation, at a total cost of \$1.15 million, of a combination of "current generation" ultra low-NOx burners, "next generation" ultra low-NOx burners and, where applicable, low-NOx burners on identified heaters and boilers at the Hartford refinery. "Current generation" ultra low-NOx burners are those burners currently on the market that are designed to achieve a NOx emission rate of 0.03 to 0.04 lb/mmBTU(HHV) when firing natural gas at typical industry firing conditions at full design load. "Next generation" ultra low-NOx burners are those burners new to the market that are designed to achieve an approximate emission rate of 0.012 to 0.015 lb/mmBTU (HHV), when firing natural gas at typical industry firing conditions. Low-NOx burners are those burners designed to have a NOx emission rate of approximately 0.06 lb/mmBtu. The cost of these installations shall be \$1.15 million including study, engineering and installation costs; the cost of the equipment alone will be not less than \$920,000. The program described in this subsection shall be completed by October 1, 2005.

26. Within 180 days after entry of this Consent Decree Premcor shall submit to U.S. EPA for its review and written approval and to the State for its review, an initial plan for NOx emission reductions from heaters and boilers ("Plan for NOx Controls For Heaters and Boilers"). This Plan shall be updated

for each semi-annual period during which equipment is installed pursuant to this subsection. Updates to the Plan shall be included in the six-month reports required under Section VII of this Decree. U.S. EPA approval of the Plan and any applicable updates shall not be unreasonably withheld. The Plan shall be in writing and shall include the following:

(a) An inventory of all heaters and boilers at the refinery, their size, type and current emission rate or factor, dates of all performance and stack tests conducted at each heater and boiler, and identification of each heater and boiler which has a CEM;

(b) Identification of all heaters and boilers at which Premcor intends to install burners under the Plan, the expected manufacturer and types of burners, the expected emission rate from the burners, and the projected date of installation; and

(c) Identification of all heaters and boilers at which Premcor has determined installation of ultra-low-NOx or low NOX burners is technically infeasible or commercially impracticable, and an explanation of the rationale behind this determination.

27. By December 31, 2002, Premcor shall install, as a demonstration, "next generation ultra low-NOx burners" on at least one heater at its Hartford facility. After completing this installation, Premcor shall evaluate the effectiveness and economic and technical feasibility of this technology in a

written feasibility report to be included in the next six-month report required pursuant to Section VII of this Decree. This feasibility report, at a minimum, shall include data from an initial perform-

ance test at maximum representative operating conditions, and a comparison of the emission rate achieved to that of other burners at the Hartford refinery.

28. Within one hundred and eighty (180) days of installation of the burners pursuant to this subsection, Premcor shall conduct a NOx emission test at the affected heaters and/or boilers, at representative operating conditions. Premcor shall propose hourly and annual NOx emission limits for the heaters and boilers to U.S. EPA, based on the results of the emission test and any additional source specific emission data. EPA will approve the emission limits or propose alternative emission limits based on source specific emission data. Premcor shall meet the resulting limit at all times following notification of approval by U.S. EPA of the proposed or alternative limits.

29. On October 1, 2002 and each consecutive October 1 following the installation of burners at the refinery heaters and/or boilers, Premcor shall submit to the State for its review, with copies to U.S. EPA, amendments to its

Federally Enforceable State Operating Permit(s) ("FESOP"s), its Title V permit application and/or any applicable permit that incorporates the emission limits established pursuant to paragraph 28. The amendments shall include data demonstrating the emission reductions obtained as a result of the burners installed, and shall include initial performance test data for the affected units where the State has deemed such tests to be necessary. The parties understand and agree that the purpose of U.S. EPA's review and approval is to determine that the proposed amendments comply with the terms of this Consent Decree, and does not constitute action on the applicable permit request. Within 30 days of receipt of U.S. EPA's approval, Premcor shall formally submit such amendments to IEPA. IEPA will act on the permit requests as expeditiously as possible.

B. Environmentally Beneficial Projects/Other Emission
Reductions

30. Commencing as of the date of entry of this Consent Decree, all heaters and boilers at the Hartford refinery shall be considered "affected facilities" for purposes of 40 C.F.R. Part 60, Subpart J, and shall be in compliance with all requirements of 40 C.F.R. Part 60, Subparts A and J as those Subparts apply to fuel gas combustion devices.

31. By no later than 30 days after entry of this Consent Decree, Premcor shall implement or continue to implement the following projects to reduce overall emissions of SO₂ and NO_x from the Hartford Refinery:

(a) To the extent it has not already done so, Premcor shall discontinue the burning of fuel oil in all heaters and boilers at the Hartford facility, and shall submit enforceable requirements preventing the burning of fuel oil in all heaters and boilers in the permit application required pursuant to paragraph 29 of this Decree.

(b) Premcor shall continue to implement operating practices designed to reduce flaring and associated emissions from coker drum switch cycles. As part of its efforts to reduce flaring, Premcor shall continuously operate the existing coker gas recovery system during all periods during which coker drums are switched.

32. Within 120 days of entry of this Consent Decree, Premcor shall submit to U.S. EPA for its review and approval and to the State for its review draft amendments to its Federally Enforceable State Operating Permit(s) ("FESOP") and its Title V permit application or permit that incorporate the requirements of the preceding paragraph. The draft amendments shall include the data demonstrating the emission reductions obtained as well as emission and operating limits that reflect the reduced

emissions resulting from the measures implemented. The Parties understand and agree that the purpose of U.S. EPA's review and approval is to determine that the draft amendments comply with the terms of this Consent Decree and does not constitute action on the permit request. Within thirty (30) days of receipt of U.S. EPA's approval, Premcor shall formally submit such amendments to IEPA. IEPA will act on the permit requests as expeditiously as possible.

33. The Parties intend that continued implementation of the foregoing measures will reduce and/or have reduced sulfur dioxide emissions from the refinery by approximately 4700 tons per year, nitrogen oxides emissions by approximately 270 tons per year and particulate emissions by approximately 630 tons per year.

VII. REPORTING AND RECORD RETENTION

34. Beginning with the second full calendar quarter after entry of this Consent Decree, and continuing for the life of the Decree, Premcor shall submit a report to U.S. EPA and Illinois EPA documenting its activities pursuant to this Consent Decree for the preceding six months. These reports, which are to be submitted within 30 days after the end of the applicable six month period, shall contain the following :

(a) a progress report on implementation of the injunctive relief required in Section V of the Decree, including

copies of applicable WGS design reports or documents produced by Defendant's contractors and/or vendors;

(b) a progress report on implementation of the program enhancements described in Section VI of this Decree. With respect to the program to reduce NOx emissions from heaters and boilers, the report shall include:

(1) identification of the units where NOx-reducing equipment has been installed in the previous six months, together with paid invoices documenting the cost of such equipment and a running total of related engineering and installation costs as itemized in paragraph 25 of this Decree;

(2) results of all performance and stack test conducted during the preceding six months on units at which the NOx-reducing equipment was installed pursuant to this Decree;

(3) all revisions to the Initial Plan for NOx Controls for Heaters and Boilers.

(c) any other information specifically required to be included by this or other Sections of this Decree.

35. The reports required by this Section shall be certified by the refinery manager or corporate officer responsible for environmental management and compliance, as follows:

I certify under penalty of law that this document and any attachments to it were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and

evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete.

I am aware that there are penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

36. Defendant shall retain all records required to be maintained in accordance with this Consent Decree for a period of five years or any longer period otherwise required by regulations.

VIII. RIGHT OF ENTRY

37. Any authorized representative of U.S. EPA and Illinois EPA, including contractors retained by the agencies, upon presentation of credentials, shall have a right to enter Defendant's Hartford Refinery at any reasonable time, for purposes of monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment and inspecting and copying records maintained by Defendant as required by the Decree. Nothing in this Consent Decree shall limit the authority of U.S. EPA or the State to conduct inspections or tests under Section 114 of the Clean Air Act, 42 U.S.C. § 7414, or other applicable statutory or regulatory provision.

IX. CIVIL PENALTIES

38. Within 30 calendar days of entry of this Consent Decree, Defendant shall pay a civil penalty in the amount of two million dollars (\$2,000,000), of which 60 percent (\$1,200,000) is to be paid to the United States and 40 percent (\$800,000) to the State of Illinois.

39. Defendant shall make payment to the United States by electronic funds transfer ("EFT") to the U.S. Department of Justice lockbox, in accordance with current EFT procedures and instructions provided to Defendant by the Financial Litigation Unit of the U.S. Attorney's Office ("USAO") for the Southern District of Illinois. All payments shall reference the USAO file number (1997V00544) and the DOJ case number (90-5-2-1-2032). Any funds received after 11:00 a.m. Eastern time shall be credited on the next business day. Defendant shall simultaneously provide written notice of payment, referencing the case name and civil action number, the USAO number and the DOJ number, to the Department of Justice and U.S. EPA, as provided in Section XI of this Decree.

40. Defendant shall make payment to the State by certified check or money order payable to the Illinois Environmental Protection Agency, for deposit in the Environmental Protection Trust Fund, to be delivered to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276

Springfield, IL 62794-9276

A copy of the transmittal letter and check shall be submitted simultaneously to:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706

The name and docket number of this case and Defendant's federal employer's identification number ("FEIN") shall appear on the certified check or money order.

41. Upon entry, this Consent Decree shall constitute an enforceable judgment for purposes of post-judgment collection, in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 et seq., and other applicable authority. The United States and the State of Illinois shall be deemed judgment creditors for purposes of payment of any unpaid amounts of the civil penalties and interest.

42. No amount of the civil penalty paid by Defendant shall be deductible for federal or State income tax purposes.

X. STIPULATED PENALTIES

43. Premcor shall pay stipulated penalties to the United States or the IEPA where appropriate, for each failure to comply with the terms of this Consent Decree, as itemized below.

The amounts identified below shall apply on the first day of violation, shall be calculated for each incremental period of violation (or portion thereof), and shall be doubled beginning on the fourth consecutive, continuing period of violation.

44. For Failure to Pay Civil Penalty and to Meet FCCU Emission Limits:

(a) Failure to timely pay the civil penalty specified in

Section IX of this Consent Decree:

\$20,000 per week, plus interest on the amount overdue at the rate specified in 31 U.S.C. § 3717.

(b) Failure to meet FCCU emission limits set forth in paragraph 19 of this Consent Decree:

\$2000 per day.

45. For NO_x Emission Reductions from Heaters and Boilers

(Part VI, Section A):

(a) Failure to install all the required burners by the applicable deadline:

\$75,000 per quarter per unit.

(b) Failure to conduct emissions test and/or submit information required pursuant to paragraph 27 of this Decree:

\$5000 per month per unit.

(c) Failure to meet the emission limits established pursuant to Section VI. Part A:

\$ 1600 per day for each heater or boiler with capacity of 150 mmBTU/hr (HHV) or greater; \$800 per day for each heater or boiler with capacity of less than 150 mmBTU/hr (HHV);

(d) Failure to submit the required permit application or amendments, written proposals, feasibility determinations or six month reports: \$ 2000 per permit application or amendment/proposal/determination/report per month.

46. Premcor shall pay such stipulated penalties upon written demand by the United States or the IEPA, no later than thirty (30) days after it receives such demand. Such demand will identify to which government agency or agencies payment must be made. Stipulated penalties shall be paid to either the United States or the IEPA, as the case may be, unless the demand indicates that the penalty is to be apportioned between the United States and the IEPA. Payments shall be made to the United States and the State in the manner set forth in Section IX of this Decree.

47. The United States and the State reserve the right to pursue any other remedies to which they are entitled, including, but not limited to, additional injunctive relief for Defendant's violations of this Consent Decree. Nothing in this Decree shall prevent the United States or the State from

pursuing a contempt action against Premcor and requesting the Court to order specific performance of the terms of the Decree.

XI. NOTICES

48. All notices, submissions and communications required under or submitted in connection with this Consent Decree are to be addressed as follows:

As to the United States

Chief, Environmental Enforcement Section
Re: DOJ 90-5-2-1-2032
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

As to U.S. EPA

Air Enforcement Branch
Air and Radiation Division (AE 17-J)
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

ATTENTION: Shaun Burke

As to the State of Illinois

Manager, Bureau of Air
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

and

James L. Morgan
Senior Assistant Attorney General
500 South Second Street
Springfield, IL 62706

As to Premcor

The Premcor Refining Group Inc.
8182 Maryland Avenue
St. Louis, MO 63105

ATTENTION: Legal Department

and

Vice-President
Environmental Health and Safety

XII. FORCE MAJEURE

49. If any event occurs which causes or may cause a delay or impediment to performance or compliance with any provision of this Consent Decree, Premcor shall notify the United States and the IEPA in writing as soon as practicable, but in any event within 20 business days of when Premcor first knew of the event or should have known of the event and its effect on performance or compliance by the exercise of due diligence. In this notice Premcor shall specifically reference this paragraph of the Consent Decree and shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by Premcor to prevent or minimize the delay, and the schedule by which those measures will be implemented. Premcor shall adopt all reasonable measures to avoid or minimize such delays.

50. Failure by Premcor to comply with the notice requirements of the preceding paragraph shall render this Section voidable by the United States or the IEPA as to the specific event for which Premcor has failed to comply with such notice require-

ment. If voided, this Section shall be of no effect as to the particular event involved.

51. The United States and IEPA shall notify Premcor in writing regarding Premcor's claim of a delay or impediment to performance within 20 business days of receipt of the Force Majeure notice provided under paragraph 49. If the United States and IEPA agree that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Premcor, including any entity controlled by Premcor, and that Premcor could not have prevented the delay by the exercise of due diligence (a "Force Majeure event"), the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances, or such other period as may be appropriate in light of the circumstances. Such stipulation may be filed as a modification to this Consent Decree pursuant to the modification procedures established in this Consent Decree. Premcor shall not be liable for stipulated penalties for the period of any such delay.

52. If the United States or the IEPA does not accept Premcor's claim of a Force Majeure event, Premcor may submit the matter to this Court for resolution to avoid payment of stipulated penalties, by filing a petition for determination of the issue with the Court. Once Premcor has submitted such a petition to the Court, the United States and IEPA shall have 20 working days to

file its response to said petition. If the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Premcor, including any entity controlled by Premcor, and that Premcor could not have prevented the delay by the exercise of due diligence, Premcor shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by the Court.

53. Premcor shall bear the burden of proving that any delay with respect to complying with any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond its control, and that Premcor could not have prevented the delay by the exercise of due diligence. Premcor shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but shall not necessarily, result in an extension of a subsequent compliance date or dates.

54. Unanticipated or increased costs or expenses associated with the performance of Premcor's obligations under this Consent Decree shall not constitute a Force Majeure event nor serve as a basis for an extension of time under this Section. Failure of a permitting authority to issue a necessary permit in a timely fashion is a Force Majeure event where the failure of the permitting authority to act is beyond the control of Premcor and Premcor has taken all steps

reasonably available to it to obtain the necessary permit, including but not limited to:

- (a) submitting a complete permit application;
- (b) responding to requests for additional information by the permitting authority in a timely fashion;
- (c) accepting lawful permit terms and conditions; and
- (d) prosecuting appeals of any unlawful terms and conditions imposed by the permitting authority in an expeditious fashion.

55. Notwithstanding any other provision of this Consent Decree, this Court shall not draw any inferences nor establish any presumptions adverse to any Party as a result of Premcor delivering a Force Majeure notice or the Parties' inability to reach agreement as to the Force Majeure claim.

56. As part of the resolution of any matter submitted to this Court under this Section, the Parties, by agreement, or this Court, by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any Force Majeure event agreed to by the United States and IEPA or approved by this Court. Defendant shall be liable for stipulated penalties in accordance with Section X of this Decree for its failure thereafter to complete the work in accordance with the extended or modified schedule.

XIII. DISPUTE RESOLUTION

57. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, except as otherwise provided in Section XII regarding Force Majeure. The dispute resolution procedure

shall be invoked upon the giving of written notice by one of the Parties to this Consent Decree to another describing the nature of the dispute and the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice; thereafter the Parties shall schedule a meeting to discuss the dispute informally not later than 14 days from the receipt of such notice.

58. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not extend beyond 30 calendar days from the date of the first meeting between representatives of the United States, IEPA and the Defendant, unless the Parties' representatives agree to shorten or extend this period.

59. In the event that the Parties are unable to reach agreement during the informal negotiation period, the United States or the IEPA shall provide the Defendant with a written summary of its position regarding the dispute. The position advanced by the United States or the IEPA shall be considered binding unless, within 45 calendar days of the Defendant's receipt of the written summary of the United States' or IEPA's position, the Defendant files a petition with this Court seeking judicial resolution of the dispute. The United States or the

IEPA shall respond to the petition within 45 calendar days of such filing.

60. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set forth in this Section may be shortened upon agreement of the Parties to the dispute.

61. Notwithstanding any other provision of this Consent Decree, the Court shall not draw any inferences nor establish any presumptions adverse to any Party as a result of invocation of this Section or the Parties' inability to reach agreement with respect to the disputed issue.

62. As part of the resolution of any dispute, the Parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of dispute resolution. Defendant shall be liable for stipulated penalties in accordance with Section X of this Decree for its failure thereafter to complete the work in accordance with the extended or modified schedule.

XIV. EFFECT OF SETTLEMENT

63. This Consent Decree shall resolve all civil liability of the Defendant to the United States and the State of Illinois under the Prevention of Significant Deterioration requirements at Part C of the Clean Air Act and the implementing regulations at 40 C.F.R. § 52.21, and the Illinois regulations which incorporate those rules, for any increase in PM and SO₂

emissions resulting from Premcor's construction, modification and operation of the FCCU at the Hartford refinery occurring prior to entry of this Consent Decree. During the life of this Decree, any major modification to the FCCU, as defined in 40 C.F.R. § 52.21, occurring after the date of entry of this Consent Decree which is not required by this Consent Decree is beyond the scope of this release. This Decree also constitutes full settlement of the claims in the United States' and State Complaints for excess emissions at the FCCU and with respect to operating the unit without a permit.

XV. MISCELLANEOUS

64. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Decree shall relieve Defendant of its obligation to comply with all applicable federal, state and local laws and regulations. Nothing contained in this Consent Decree shall be construed to prevent, alter or limit the ability of the United States or IEPA to seek or obtain other remedies or sanctions available under other federal, state or local statutes or regulations by virtue of Defendant's violation of this Consent Decree.

65. Third Parties. This Consent Decree does not limit, enlarge or affect the rights of any Party to this Consent Decree as against any third parties.

66. Costs. Each Party to this action shall bear its own costs and attorneys' fees.

67. Public Documents. All information and documents submitted by the Defendant to the United States or the IEPA pursuant to this Consent Decree shall be subject to public inspection, unless subject to legal privileges or protection or identified and supported as business confidential by the Defendant in accordance with 40 C.F.R. Part 2, or any equivalent State statutes and regulations.

68. Public Comments. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration by the United States of any comments received. The United States reserves the right to withdraw its consent to this Decree prior to moving for entry if the comments received so warrant.

69. Paperwork Reduction Act. The information required to be maintained or submitted pursuant to this Consent Decree is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 et seq.

70. Authority. The undersigned representative of each Party to this Consent Decree certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to them.

71. Modification. This Consent Decree may be modified only by Order of the Court.

72. Continuing Jurisdiction. The Court retains jurisdiction of this case after entry of this Consent Decree to enforce compliance with its terms, and to take any action necessary or appropriate for its interpretation, construction, execution, or modification. During the term of this Consent Decree, any Party may apply to the Court for any relief necessary to construe or effectuate this Decree.

73. Entire Agreement. This Consent Decree constitutes the entire agreement of the Parties relating to the subject matter herein and supersedes any prior negotiations, agreements or representations, whether oral or written.

74. Counterparts. This Consent Decree may be executed in several counterparts, each of which may be deemed an original, but all of which taken together constitute one and the same instrument.

XVI. TERMINATION

75. This Consent Decree shall be subject to termination upon motion by any Party after the Defendant satisfies all requirements for its termination, which include payment of all penalties, including stipulated penalties, that may be due to the United States or IEPA, installation of the control technology and equipment specified herein, receipt by Defendant of all applicable permits, and receipt by U.S. EPA and IEPA of the first progress report following the conclusion of Defendant's operation for at least one year of the wet gas scrubber and the low-NOx burners on its heaters and boilers in

compliance with the emission limits established herein. If Defendant believes at such time that it is in compliance with the applicable requirements for termination, it shall so certify to the United States and IEPA. Unless the United States or the State objects in writing, with specific reasons for the objections, within 120 days of receipt of the certification, the Court shall terminate this Consent Decree on Defendant's motion. If the United States or the State objects to Defendant's certification, the matter shall be submitted to the Court for resolution pursuant to the dispute resolution provisions of this Consent Decree. In such case, the Defendant shall bear the burden of proving that this Consent Decree should be terminated.

THE UNDERSIGNED PARTIES enter into this Consent Decree and submit it to the Court for approval and entry.

FOR THE UNITED STATES OF AMERICA

Date: _____

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FOR THE STATE OF ILLINOIS

JAMES E. RYAN
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State of Illinois

Date: _____

By: _____

THOMAS DAVIS
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Assistant Attorney General
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PROTECTION

ILLINOIS ENVIRONMENTAL
AGENCY

Date: _____

By: _____

JOSEPH E. SVOBODA
Chief Counsel
Division of Legal Counsel
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Springfield, Illinois 62794-9276

Date: _____

FOR PREMCOR

JEFFRY N. QUINN
Executive Vice-President
The Premcor Refining Group Inc.
8182 Maryland Avenue
St. Louis, Missouri 63105

So entered in accordance with the foregoing this ____ day
of _____, 2001.

United States District Judge